

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TIMOTHY CHEROTTI and ROSEBUD VENTURES LLC,

Plaintiffs,

-v-

EXPHAND, INC. and FRANK NEMIROFSKY,

Defendants.

CIVIL ACTION NO.: 20 Civ. 11102 (SLC)

**ORDER**

**SARAH L. CAVE**, United States Magistrate Judge.

The Court is in receipt of Plaintiffs' letter-motion for a conference regarding their request for an order compelling Defendant Frank Nemirofsky to appear for a deposition or, in the alternative, entering a certificate of default against Mr. Nemirofsky. (ECF No. 81 (the "Letter-Motion")). By **May 6, 2022**, Mr. Nemirofsky shall file a response to the Letter-Motion.

Mr. Nemirofsky is warned that his failure to comply with this Order may result in a finding of contempt, the award of the requested relief, and the entry of a certificate of default and a default judgment. See Fed. R. Civ. P. 37(b)–(d) (providing, inter alia, that a party's failure to obey a discovery order may result in "a default judgment against the disobedient party"); Guggenheim Cap., LLC v. Birnbaum, 722 F.3d 444, 454 (2d Cir. 2013) (finding that the district court "did not abuse its discretion by entering a default judgment against [the defendant] as a discovery sanction under Rule 37" for the defendant's willful disobedience of discovery orders); see also Fed R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.").

Plaintiffs shall promptly email a copy of this Order to Mr. Nemirofsky.

Dated: New York, New York  
April 29, 2022

SO ORDERED.

  
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**SARAH L. CAVE**  
**United States Magistrate Judge**